

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
January 10, 2013**

MEETING HELD IN TOWN HALL AUDITORIUM

Members Present: Robert Littlefield, David Nicolau, Tom Roberts and Harriet Gordon.

Members Absent: Anne Howard, Amy Germain, Joe Vasta and Leif Hamnquist.

Others Present: Ellen C. Battaglini (Recording Secretary).

WORK SESSION

Acting Chair Robert Littlefield called the Work Session to order at 6:15 P.M.

Robert Littlefield moved to postpone and then to reconvene the Work Session in Caucus Hall, Tom Roberts seconded and it was so voted, 4-0.

MEETING HELD IN CAUCUS HALL

Members Present: Robert Littlefield, Amy Germain, David Nicolau, Tom Roberts, Harriet Gordon and Joe Vasta.

Members Absent: Anne Howard (excused) and Leif Hamnquist (excused).

Others Present: Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

WORK SESSION

Vice Chair Robert Littlefield reconvened the Work Session at 6:17 P.M.

PENDING DECISIONS:

FY13-18 **225 Commercial Street (Town Commercial Center Zone), Robin Reid, Esq., on behalf of The Galley Catering, LLC –**
Anne Howard, Amy Germain, David Nicolau, Tom Roberts and Joe Vasta sat on the case. Tom Roberts read the decision. *David Nicolau moved to approve the language as written, Harriet Gordon seconded and it was so voted, 3-0.*

FY13-17 **211½ Bradford Street (Residential 3 Zone), Brandon Motta, Recreation Director –**
Anne Howard, Amy Germain, David Nicolau, Joe Vasta and Leif Hamnquist sat on the case. David Nicolau read the decision. *Amy Germain moved to approve*

the language as written, Harriet Gordon seconded and it was so voted, 3-0.

MINUTES: December 20, 2012 – Amy Germain moved to approve the language as amended, Tom Roberts seconded and it was so voted, 4-0.

January 3, 2013 – Tom Roberts moved to approve the language as written, David Nicolau seconded and it was so voted, 4-0.

FY13-20 85-87 Shank Painter Road (General Commercial Zone), Mac Hay on behalf of Mac's Seafood –

Anne Howard, Amy Germain, David Nicolau, Tom Roberts and Joe Vasta sat on the case. Joe Vasta read the decision. *Amy Germain moved to approve the language as amended, Tom Roberts seconded and it was so voted, 4-0.*

FY13-19 186 Commercial Street (Town Commercial Center Zone), John Yingling on behalf of Enzo –

Anne Howard, Amy Germain, David Nicolau, Tom Roberts and Leif Hamnquist sat on the case. Amy Germain read the decision. *David Nicolau moved to approve the language as written, Tom Roberts seconded and it was so voted, 3-0.*

FY13-21 356 Commercial Street (Town Commercial Center Zone), The Town of Provincetown/Provincetown Public Library –

Anne Howard, Amy Germain, David Nicolau, Joe Vasta and Leif Hamnquist sat on the case. Amy Germain read the decision. *Robert Littlefield moved to approve the language as amended, Harriet Gordon seconded and it was so voted, 3-0.*

Amy Germain raised the issue of the importance of Board members paying attention to decisions while they are being read. The Board briefly discussed the issue and it was decided that it was the duty of the Chair to remind members to be quiet and listen.

BOARD REORGANIZATION:

Amy Germain moved to nominate Robert Littlefield as Chair, David Nicolau as Vice Chair and Amy Germain as Clerk of the Zoning Board of Appeals.

Robert Littlefield moved to nominate David Nicolau as Chair and Robert Littlefield as Vice Chair .

Amy Germain withdrew her motion. The Board discussed Robert Littlefield's motion. David Nicolau stated that if he became Chair, he would suggest that each member of the Board have the opportunity to chair a hearing.

Amy Germain moved to nominate David Nicolau as Chair, Robert Littlefield as Vice Chair and Amy Germain as Clerk of the Zoning Board of Appeals, Tom Roberts seconded and it was so voted, 5-0.

Acting Chair Robert Littlefield postponed the Work Session at 7:00 P.M.

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: Robert Littlefield, Amy Germain, David Nicolau, Tom Roberts, Harriet Gordon and Joe Vasta.

Members Absent: Anne Howard (excused) and Leif Hamnquist (excused).

Others Present: Attorney Ilana Quirk (Town Counsel), Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

PUBLIC HEARING

Chair David Nicolau called the meeting to order at 7:04 P.M. There were six members of the Zoning Board of Appeals present and two absent.

CONTINUED CASES:

- FY13-16** **7 Conant Street (*Residential 3 Zone*), Conant West End, LLC –**
The applicant seeks a Special Permit under Article 2, Section 2550 and Article 3, Section 3110 of the Zoning By-Laws to renovate two pre-existing, non-conforming cottages. The non-conformity consists of the maximum number of principle buildings on the lot. This case is continued to the January 17, 2013 Public Hearing.
- FY13-22** **303 Commercial Street (*Town Commercial Center Zone*), John Drago of Timtanman Corp. d/b/a Post Office Café -**
The applicant seeks a Special Permit under Article 2, Sections 2440 and 2460 of the Zoning By-Laws for the outdoor service of food and alcoholic beverages on the patio area at 307 Commercial Street to be operated by the Post Office Café. This case is continued to the January 17, 2013 Public Hearing.

POSTPONED CASES:

- FY13-23** **7 Browne Street (*Residential 3 Zone*), Joseph Freitas –**
The applicant seeks a Special Permit under Article 2, Section 2640 and Article 3, Section 3110 of the Zoning By-Laws to construct a second floor deck addition up and along pre-existing, non-conforming setbacks on a single family dwelling and for a deviation in building scale. This case is postponed until the February 7, 2013 Public Hearing.
- FY13-25** **32 Ship's Way Road (*Residential 1 Zone*), Pavel Fiodarau on behalf of Paul Gable and Tony Lopez –**
The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a dormer up and along pre-existing, non-conforming lot lines and/or a Variance under Article 5, Section 5222 of the Zoning By-Laws to

construct an attached farmer's porch and an attached garage.

FY13-26 32 Ship's Way Road (Residential 1 Zone), Pavel Fiodarau on behalf of Paul Gable and Tony Lopez –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a dormer up and along pre-existing, non-conforming lot lines and for a Variance under Article 5, Section 5222 of the Zoning By-Laws to construct a farmer's porch and a detached garage within existing setbacks. These cases are postponed until the January 17, 2013 Public Hearing.

Attorney Quirk inquired of Harriet Gordon if she had sat on the previous hearings of Cases #FY13-36 and FY13-37. She replied that she did not sit on the cases but was present at the hearing of both cases.

CONTINUED CASES:

FY12-37 158 Bradford Street (Residential 3 Zone), Lester J. Murphy, Attorney, on behalf of 158 Bradford, LLC –

The applicant seeks a Special Permit under Article 3, Section 3110, ¶3 of the Zoning By-Laws for the extension of a pre-existing, non-conforming guest house/lodging house use by the addition of one guest unit. David Nicolau Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case.

Presentation: Attorney Lester J. Murphy and Robyn Bazlen-Weglarz appeared to discuss the application. Revised plans for consideration by the Board were submitted by the applicant. Attorney Murphy stated that the concerns of the Board at the previous hearing were the design and proximity of the rear building, which was being re-built and having a second story added, to the main guesthouse building. The proposed cottage was to be sited just 3' from the main building on the premises. The original design had the peak of the rear building running perpendicular to the peak of the main guesthouse, which would place the gable end facing the main guesthouse. In an effort to address the Board's concerns, the revised plans show the proposed gable turned 90°, so the gable ends of both buildings face the same direction. This significantly reduces the amount of horizontal area of the building that would be directly facing the existing guesthouse. The footprint will not change, only the gable end is being moved. Instead of the entire wall going up the full 24' height, now, except for a 12' 9" section of dormer area, the rest goes up about 12' to 14' and is angled away from the main building. A significant amount of the frontal section of the cottage will no longer face the existing guesthouse. The only reason the 12' 9" section of dormer area is being proposed is to handle an interior stairway from the first floor to the second floor. The roof will be pitched away from the main guesthouse building. The revised plans try to reduce the amount of structure that would be located within that 3' 6" setback. The applicant proposes using fire-resistant fiber cement clapboard on the side of the cottage that faces the main guesthouse building in order to reduce the fire hazard created by the proximity of the two structures. Fire-resistant shingles will be used on the roof. The applicant would be willing to re-side the main guesthouse building facing the cottage with fire-resistant cement clapboard as well. Attorney Murphy reiterated that in trying to

address the safety issues raised by the Board, the plans have reduced the extent of the massing of the cottage in facing the guesthouse and in the use of new fire-resistant materials. The applicant did reach out to neighbors to show them the revised plans.

Documents Submitted: Proposed plans entitled ‘New Cottage for Admiral’s Landing’, drawn by Brown, Lindquist, Fenuccio and Rabe, dated 12/27/12, page A-1.0, Proposed floor plans and proposed elevations, pages A-1.1, A-2.0, A-2.1, A-2.2, A-2.3 and A-2.4.

Public Comment: Mark Juare, an abutter, spoke in favor of the application.

At 7: 17 P.M., Attorney Quirk requested a 5-minute adjournment in order to confer with Attorney Murphy. *Amy Germain moved to adjourn at 7:17 P.M. to allow Attorney Quirk to confer with Attorney Murphy, Tom Roberts seconded and it was so voted, 5-0.*

Chair David Nicolau called the Hearing to order at 7:22 P.M. He announced that Harriet Gordon had not been present at any of the last hearing of Cases #FY13-36 and FY13-37 and that Joe Vasta, who had been present at the last hearing of the two cases, would sit on the cases being heard.

Public Comment (cont.): Dale Conklin spoke in favor of the application. There were 5 new letters in the file in support of the application, one from a condominium association directly abutting the property and one from Mr. Conklin.

Board Discussion: Attorney Murphy stated that revised building calculations will have to be done, but he was confident that the new scale would be within the allowable neighborhood average. In response to a question regarding fire safety by Tom Roberts, Attorney Quirk stated that the Fire Chief would receive a copy of the revised plans when the building permit is sought. Amy Germain asked if the Fire Commissioner had reviewed the new plans and thought it important that his opinion be solicited. The fire issue was one of the concerns raised by the Board. She suggested to the Board that the Fire Commissioner’s determination be a condition of the Special Permit.

Attorney Quirk interjected that the Board cannot make a decision to grant a Special Permit contingent on another’s approval. The Board has to make a decision and cannot send it to someone else to potentially undue the decision. Attorney Quirk reminded the Board that if it were to seek the Fire Commissioner’s opinion on the project, it would require that the public portion of the hearing remain open.

Amy Germain raised the issue of the Board’s concern about density, which she thought Attorney Murphy had not addressed. Robert Littlefield thought that the issue of fire safety should be addressed by the Building Commissioner. Chair David Nicolau asked that Board to consider the issue of the separation of the buildings on the lot, and whether that separation was sufficient. If it is not sufficient, does that render the proposed change substantially more detrimental to

the neighborhood or not. After a brief discussion, the sense of the Board was that it didn't need the Fire Commissioner to weigh in on the project. The Board discussed the separation of the buildings and whether the proposed cottage was a two-story structure or higher than two stories.

Amy Germain moved to close the public portion of the hearing, Tom Roberts seconded and it was so voted, 5-0.

Robert Littlefield did not think that the project was substantially more detrimental to the neighborhood and that it supported the goals of the Local Comprehensive Plan. He also believed that the revised plan is slightly less non-conforming on the back line than what exists. Amy Germain supported the project, but is concerned about the fire and density issues. Joe Vasta agreed with Robert Littlefield. Tom Roberts supported the effort, but didn't think it met the requirements of Article 5, Section 5300. David Nicolau thought that the lot was very congested and the separation of the buildings was still close and that was detrimental. There was still a dormer on the side of the cottage, so it was still going up and along a line and that, in his opinion, was not safe. The proximity of the two buildings still presented a safety issue. He also stated that he thought the parking situation was tight and another potential safety issue because of its egress onto a busy public way. By moving a bedroom from the guesthouse to the cottage, the applicant was making a bedroom available to the public that was not available before, which means more congestion and hazard. The buildings would still be close together even though the gable was moved. The proposed structure was more non-conforming and made the lot denser than what now exists.

Robert Littlefield moved to grant a Special Permit under Article 3, Section 3110, ¶3 of the Zoning By-Laws for the extension of a pre-existing, non-conforming guest house/lodging house use by the addition of one guest unit at the property located at 158 Bradford Street (Res 3), Joe Vasta seconded and it was so voted, 2-3 (David Nicolau, Amy Germain and Tom Roberts opposed). The motion was defeated.

Amy Germain moved to deny a Special Permit under Article 3, Section 3110, ¶3 of the Zoning By-Laws for the extension of a pre-existing, non-conforming guest house/lodging house use by the addition of one guest unit for the property located at 158 Bradford Street (Res 3), Tom Roberts seconded and it was so voted, 3-2. (Robert Littlefield and Joe Vasta opposed).

FY12-36 158 Bradford Street (Residential 3 Zone), Lester J. Murphy, Attorney, on behalf of 158 Bradford, LLC –

The applicant seeks a Special Permit under Article 3, Section 3115 of the Zoning By-Law for the demolition and reconstruction of a lawful, pre-existing, non-conforming structure and for changes to the footprint and an increase in scale and regarding side yard and building setbacks under Article 3, Section 3110, ¶2 and Article 2, Section 2550 of Zoning By-Laws.

Amy Germain moved to deny a Special Permit under Article 3, Section 3115 of the Zoning By-Law for the demolition and reconstruction of a lawful, pre-existing, non-conforming structure and for changes to the footprint and an

increase in scale and regarding side yard and building setbacks under Article 3, Section 3110, ¶2 and Article 2, Section 2550 of Zoning By-Laws for the property located at 158 Bradford Street (Res 3), Tom Roberts seconded and it was so voted, 3-2 (Robert Littlefield and Joe Vasta opposed).

Attorney Quirk will prepare a decision for the Board to review.

Chair David Nicolau adjourned the Public Hearing at 8:03 P.M.

WORK SESSION

Chair David Nicolau reconvened the Work Session at 8:03 P.M.

PENDING DECISIONS:

FY13-24 **471 Commercial Street (Residential 3 Zone), Deborah Paine, Inc., on behalf of Kenneth Fulk –**
Robert Littlefield, Amy Germain, David Nicolau, Tom Roberts and Harriet Gordon sat on the case. David Nicolau read the decision. *Amy Germain moved to approve the language as written, Tom Roberts seconded and it was so voted, 5-0.*

NEXT MEETING: The next meeting will take place on January 17, 2013. It will consist of a Work Session at 6:30 P.M. followed by a Public Hearing at 7:00 P.M. and a Work Session to follow in the Judge Welsh Room.

ADJOURNMENT: *Amy Germain moved to adjourn at 8:45 P.M. and it was so voted unanimously.*

These minutes were approved by a vote of the Zoning Board of Appeals at its meeting on January 24, 2013.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2013
David Nicolau, Chair